

REMARKS

At the time of the Office Action dated August 6, 2004, claims 1-36 were pending in this application. Of those claims, claims 1-7, 13-14, 20, and 22-36 have been rejected. Applicants acknowledge, with appreciation, the Examiner's indication that claims 8-12, 15-19, and 21 contain allowable subject matter. New claims 37-46 have been added, and Applicants submit that the present Amendment does not generate any new matter issue.

On page two of the Office Action, the Examiner objected to the Abstract for various informalities. In response, Applicants have amended the Abstract to remove extraneous phrases.

**CLAIMS 1-7, 13-14, 22-30 AND 36 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING
ANTICIPATED BY ALIM, U.S. PATENT NO. 6,347,687**

On page two of the Office Action, the Examiner asserted that Alim discloses a ladder configured for installation in an opening corresponding to that claimed. This rejection is respectfully traversed.

Initially, Applicants note that Alim fails to teach or suggest a ladder configured for installation in an opening, as recited in independent claims 1 and 22. As discussed in M.P.E.P. § 2111.02, where statements in the preamble regarding intended use result in a structural difference between the claimed invention and the prior art, the recitation serves to limit the claim. By reciting that the folding ladder is "configured for installation in an opening," Applicants have limited the claimed invention to a particular type of ladder. As would readily be

recognized by one skilled in the art, the ladder of Alim is not configured for installation in an opening. The ladder of Alim is freestanding and would not be installed into an opening.

Applicants, therefore, respectfully submit that Alim fails to identically describe the claimed invention, as recited in independent claims 1 and 22, within the meaning of 35 U.S.C. § 102.

Claims 2 and 28 recite that the hinge is a locking hinge configured to lock in the fully deployed position of the foldable ladder. Applicants note, however, that the "hinge type connection 17" of Alim is not described as a locking hinge that will lock in the fully deployed position of the foldable ladder. With regard to dependent claim 3, Applicants are unable to determine where Alim discloses that the hinge is configured to provide increased resistance to opening or closing in at least one angle along an arc traveled by the ladder including a fully deployed position of the foldable ladder.

For the reasons submitted supra, Applicants submit that Alim fails to identically teach or suggest the claimed invention recited in claims 1-7, 13-14, 22-30, and 36 within the meaning of 35 U.S.C. § 102. Applicants, therefore, respectfully solicit the withdrawal of the imposed rejection of claims 1-7, 13-14, 22-30, and 36 under 35 U.S.C. § 102 for anticipation based upon Alim.

CLAIMS 22-36 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY

MCALLISTER ET AL., U.S. PATENT NO. 4,750,587 (HEREINAFTER MCALLISTER)

On page three of the Office Action, the Examiner asserted that McAllister discloses a ladder corresponding to that claimed. This rejection is respectfully traversed.

In the statement of the rejection with regard to McAllister, the Examiner asserted the following:

McAllister et al set forth a folding ladder comprising an upper ladder section comprising left and right ladder rails; a lower ladder section comprising left and right ladder rails; a plurality of steps (36 and 38) "rotatably" disposed between the ladder rails between retracted and deployed positions; the lower rails configured to slide within tracks of the upper rails; an additional section (viewed as the foot portions) configured to translate and rotate with respect to the lower ladder section; and wherein the ladder being formed from one of metal, resin, and composite material. (emphasis in original)

Independent claim 22, in part, recites "an upper ladder section ... having at least one step ... a lower ladder section ... having at least one step" and that the "lower ladder section [is] configured to translate and rotate with respect to the upper ladder section into a deployed position substantially co-linear with the upper ladder section." However, in the statement of the rejection, the Examiner failed to indicate that McAllister teaches or suggests a lower ladder section that rotates with respect to an upper ladder section, such that the lower ladder section is substantially co-linear with the upper ladder section in a deployed position. It is readily apparent that the upper ladder section (i.e., features 28, 30) of McAllister translates linearly with the lower ladder section (i.e., features 32, 34). Thus, McAllister fails to identically describe the claimed invention, as recited in independent claim 22, within the meaning of 35 U.S.C. § 102. Similarly, Applicants have failed to identify where McAllister teaches or suggests a hinge that rotatably connects the upper ladder section to the lower ladder section, as recited in dependent claims 27 and 28.

For the reasons submitted supra, Applicants submit that McAllister fails to identically teach or suggest the claimed invention recited in claims 22-36 within the meaning of 35 U.S.C. § 102. Applicants, therefore, respectfully solicit the withdrawal of the imposed rejection of claims 22-36 under 35 U.S.C. § 102 for anticipation based upon Alim.

CLAIM 20 IS REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON ALIM IN

VIEW OF McALLISTER

On pages three and four of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify the ladder of Alim in view of McAllister to arrive at the claimed invention. This rejection is respectfully traversed.

Claim 20 depends ultimately from independent claim 1, and Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for anticipation based upon Alim. Specifically, Alim does not disclose a ladder configured for installation in an opening. The secondary reference is not cited to overcome this identified deficiency of Alim, and there is no motivation found in McAllister to modify Alim to cure this deficiency. Accordingly, the proposed combination of references would not yield the claimed invention. Applicants, therefore, respectfully submit that the imposed rejection of claims 20 under 35 U.S.C. § 103 for obviousness based upon Alim in view of McAllister is not viable and, hence, solicit withdrawal thereof.

New claims 37-46 further distinguish the claimed invention of the applied prior art. For example, claims 37 and 42 recite that in the fully deployed position, the rails of the upper ladder section are substantially parallel with the rails of the upper ladder section. This feature is not taught by Alim, since the two ladder sections 8, 12 are at an angle in the fully deployed position.

New claims 38 and 43 recite that in the fully deployed position, a total length of the foldable ladder is approximately equal to or greater than a length of the first section plus a length of the second section. This feature is not taught by Alim, since in the fully deployed position the two ladder sections 8, 12 are at an angle, and the total length of these two ladder section is substantially less than the length of the first section plus the length of the second section.

New claims 39 and 44 recite that the upper section includes a bracket configured for attachment to a panel associated with the opening, and new claims 40 and 45 recite a second hinge connected to the upper section that is configured to attach to a member associated with the opening. Neither of these features are taught or suggested by the applied prior art.

New claims 41 and 46 recite that each step is rotatably attached only to the rails of the upper section or the rails of the lower section. This feature is not taught or suggested by Alim, which discloses that the upper step is connected to both sections.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417, and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP



Scott D. Paul
Registration No. 42,984

600 13th Street, N.W.
Washington, DC 20005-3096
(202) 756-8000 SDP:kap
Date: September 27, 2004
Facsimile: (202) 756-8087